

REMARKS

This Amendment is filed in response to the Office Action mailed February 5, 2008. In this Amendment, claims 79, 118, 119 and 124 are amended, claims 129-140 are added and claims 80-106, 111-117, 120-123, 125 and 127-128 are unchanged. Following entry of this amendment, claims 79-106 and 111-140 shall be pending.

In the Office Action, claims 79-106 and 111-128 have been rejected based on prior art grounds. For the reasons set forth below, these rejections are hereby traversed.

I. PRIOR ART REJECTIONS

Claims 124, 125 and 127 are rejected under 35 U.S.C. Section 102(e) as being anticipated by U.S. Patent No. 6,730,119 to Smalling. Claims 79-106 and 111-128 are rejected under 35 U.S.C. Section 103(a) as being obvious by various combinations of U.S. Patent Publication No. 2002/0169497 to Wholey et al., U.S. Patent No. 5,785,679 to Abolfathi et al., U.S. Patent 6,238,403 to Greene, Jr. et al. (the "*Greene, Jr. et al. Patent*"), U.S. Patent No. 6,730,119 to Smalling and U.S. Patent No. 6,676,971 to Goupil et al.

In an effort solely to expedite prosecution of this application, the independent claims have been further amended to include a preparation technique for expansile material. For example, independent claim 79 now recites that the expansile polymeric material is previously physically compressed and set in a non-expanded state. As described in paragraph 0070 of the present published Application, this technique allows the non-expanded expansile polymeric material to expand to a much larger size than would otherwise be possible. In other words, more expansile polymeric material can be compressed into a smaller size. Hence, the expansile polymeric material can expand at least 25 times in size and preferably about 70-100 times. In this respect, the expansile polymeric material can better fill a perigraft space and thus better treat an aneurysm.

The compression and setting of the expansile polymeric material as recited in claim 79 is not present in the prior art cited by the Examiner. While it is acknowledged that the *Greene, Jr. et al. Patent* does contain similar expansile material "preparation" disclosure, this reference is not prior art to the present Application. Specifically, the expansile material preparation described both in the present Application and in the *Greene, Jr. et al. Patent* was solely invented by George R. Greene, Jr., who is hereby added as an inventor to the present Application. As attested to in the attached Declaration of George R. Greene Jr., Under 37 C.F.R. Section 1.132, Greene solely invented this preparation while working for Microvention, Inc.. While the expansile material preparation was included in the *Greene, Jr. et al. Patent*, it was never claimed.

Therefore, the *Greene, Jr. et al. Patent* cannot be properly asserted against the present application under 35 U.S.C. Sections 102 or 103. Hence, it is believed that claim 79, and dependent claims 80-106, 111-117 and 129-132 are patentable.

In another example, claim 118 has been amended to recite that the expansile material was previously squeezed to a desired size from a larger initial configuration and set at the desired size. As described in paragraph 0070 of the present published Application, this technique allows the expansile material to expand to a much larger size than would otherwise be possible. In other words, more expansile material can be compressed into a smaller size. Hence, the expansile material can expand at least 25 times in size and preferably about 70-100 times. In this respect, the expansile material can better fill a perigraft space and thus better treat an aneurysm.

The compression and setting of the expansile material as recited in claim 118 is not present in the prior art references cited by the Examiner, but is described in the *Greene, Jr. et al. Patent* as previously described with regard to claim 79. Since this expansile material preparation described in both *Greene, Jr. et al. Patent* and the present Application was solely invented by Greene, Jr., the *Greene, Jr. et al. Patent* can not be asserted as prior art under 35 U.S.C. Sections 102 or 103. Therefore, it is believed that claim 118, and dependent claims 119-123 and 133-116 are patentable.

In another example, claim 124 has been amended to recite physically compressing the expansile material to a first pellet size and setting the expansile material at the first pellet size. As described in paragraph 0070 of the present published Application, this technique allows the expansile material to expand to a much larger size than would otherwise be possible. In other words, more expansile material can be compressed into a smaller size. Hence, the expansile material can expand at least 25 times in size and preferably about 70-100 times. In this respect, the expansile material can better fill a perigraft space and thus better treat an aneurysm.

The compression and setting of the expansile material as recited in claim 124 is not present in the prior art references cited by the Examiner, but is described in the *Greene, Jr. et al. Patent* as previously described with regard to claim 79. Since this expansile material preparation described in both the *Greene, Jr. et al. Patent* and the present Application was solely invented by Greene, Jr., the *Greene, Jr. et al. Patent* can not be asserted as prior art under 35 U.S.C. Sections 102 or 103. Therefore, it is believed that claim 124, and dependent claims 125-128 and 137-140 are patentable.

CONCLUSION


In view of the foregoing, it is submitted that pending claims 79-106 and 111-140 are now in condition for allowance. Hence, an indication of allowability is hereby requested.

If for any reason direct communication with Applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is cordially urged to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-2809.

Respectfully submitted,

Dated: September 8, 2008



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